



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/169193

PRELIMINARY RECITALS

Pursuant to a petition filed October 2, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on November 12, 2015, by telephone.

The issue for determination is whether petitioner was overpaid FS because she failed to report income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of North Carolina. She resided in Dane County and received FS there until August, 2014.
2. Petitioner received FS and Medical Assistance (MA) for herself and her daughter in Dane County in 2013. In the summer, 2013, petitioner received both child support and unemployment compensation, but by the end of September those incomes ended. In October, 2013 petitioner's only reported income was \$665.28 per month Supplemental Security Income (SSI).

3. By a notice dated October 28, 2013, the county informed petitioner that she would receive \$347 per month FS. The notice told petitioner that she needed to report any new source of income.
4. Another notice was sent to petitioner on October 29, 2013 regarding MA. That notice told petitioner that she needed to report a change if income rose above \$1,292.50. Petitioner began to work for [REDACTED] in either September or October; her October income from [REDACTED] was \$391.88, and she did not report it.
5. On approximately November 1, 2013 petitioner began to work as an employee for [REDACTED] (she actually started there in September but as an unpaid trainee). She did not receive her first paycheck from [REDACTED] until December 31, 2013, when she was paid for two months working in the amount of \$12,800. Petitioner did not report the [REDACTED] income either.
6. The county discovered the incomes in a state wage match in February, 2014. It requested verification from the employers; [REDACTED] responded but [REDACTED] did not.
7. Because the county worker did not know when the [REDACTED] job started, she averaged the fourth quarter [REDACTED] income over the three months of October through December. Under that scenario petitioner should have reported the income by November 10, 2013, and since the income put petitioner over the FS income limit, she was overpaid beginning December 1, 2013.
8. By a notice dated July 22, 2015, the county informed petitioner that she was overpaid \$2,429 in FS from December 1, 2014 through June 30, 2015, claim no. [REDACTED].

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Under current FS reporting rules a household is required to report a change in income if income exceeds 130% of the federal poverty level (FPL). Handbook, Appendix 6.1.1.2. If the household is made up entirely of elderly, blind, or disabled individuals (EBD), there are different reporting requirements. For example, any new source of income must be reported. Handbook, App. 6.1.1.1. Petitioner's household included her daughter who is not EBD, and thus petitioner comes under the 130% requirement. I note here that I cannot determine what happened to petitioner's SSI, or even if she was receiving SSI in 2013; SSI was not mentioned during the hearing and I know of it only because of the October 28, 2013 notice.

The October 28 notice gave petitioner the requirements for EBD households. The second notice, on October 29, gave petitioner the correct requirement of reporting only if income was over a certain threshold of \$1,292.50 per month. Petitioner's income from [REDACTED] was below \$1,292.50, but her [REDACTED] income eventually put her well above that level.

I conclude that petitioner did not have to report new income unless it went over the 130% mark. That happened in December, 2013, meaning that she should have reported the change by January 10, 2014. I realize that petitioner knew she would be working for pay at [REDACTED] in November, but there was no guarantee she would receive pay until she actually received it. This is certainly an unusual situation, but the reporting requirement has always been to report when income actually exceeds the FPL threshold, not

when it is anticipated to exceed the threshold. I also note that the overpayment claim was not done incorrectly; I am changing it based upon new information provided by petitioner at the hearing.

Petitioner still was overpaid FS. However, the amount should be reduced by \$694 for the months of December, 2013 and January, 2014.

CONCLUSIONS OF LAW

1. Petitioner was overpaid \$1,735 in FS for the period February through June, 2014 because she failed to report new income that started in December, 2013.
2. Petitioner was not overpaid FS in December, 2013 and January, 2014 because the unreported income did not put her over the FPL reporting threshold until December, 2013.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to amend overpayment claim no. [REDACTED] to be for \$1,735 for the months of February through June, 2014. The county shall do so within 10 days of this decision. In all other respects the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

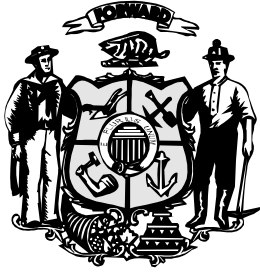
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of November, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 18, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability